REMARKS

Applicants, through their undersigned attorneys, hereby traverse the requirement for restriction set forth in the July 7, 2005 Official Action issued in the above-identified patent application. The Examiner contends that the claims are directed to four (4) distinct inventions. These are as follows:

Group I: Claims 33-39, 60-65, 69-83, 100, 101, drawn to a method of silencing a target gene in an organism by PTGS, comprising introducing a silencing agent comprising short RNA molecules, classified in class 800, subclass 285.

Group II: Claims 40-45, 66-68, 99, 103, drawn to a method of silencing a target gene in an organism, comprising providing a DNA construct containing a promoter operably linked to a DNA which transcribes into silencing agent, classified in class 800, subclass 278.

Group III: Claims 46-59, drawn to a method of selecting a target region in a target gene which is desired to be silenced, classified in class 536, subclass 25.4.

Group IV: Claims 84-92, drawn to a method of selectively silencing a target gene in a cell, comprising introduction of exogenous nucleic acid comprising a transcribable nucleic acid construct encoding a SRM or a precursor of a SRM, classified in class 800, subclass 290.

The Examiner also indicates that claims 93-98, 102, and 104-110 link inventions of Group I and Group II. Applicants assume that each of the aforementioned claims will be included in either the Group I or the Group II inventions. The Examiner also contends that claims 33-80 and 84-110 are generic to a plurality of disclosed patentably distinct

species and requires applicant to elect a single disclosed species.

Applicants respectfully submit that the present restriction requirement is improper for failing to comply with the relevant provisions of the Manual of Patent Examination Procedures (MPEP). According to the MPEP §803, two criteria must be satisfied in order to warrant restriction:

1) the inventions must be independent and distinct as claimed; and

2) there must be a serious burden on the Examiner if the restriction is not required.

Notwithstanding the Examiner's assertion to the contrary, it is apparent from an objective reading of the claims of Groups I, II, and IV that they are drawn to closely related subject matter and, therefore, do not comprise separate and distinct inventions. Nor can the examination of Groups I, II and IV together reasonably be regarded as imposing a serious burden on the Examiner. Indeed, Group I is drawn to, as noted by the Examiner, a method for silencing a target gene in an organism by PTGS by introducing RNA molecules into said organism. Group II is also drawn to a method of silencing wherein the silencing agent is provided on a DNA construct. Applicants submit that a proper search of the Groups I, II and IV inventions requires the Examiner to search methods for inducing PTGS using any recombinant nucleic acid methodology and further such a search would be encompass the use of both RNA and DNA molecules. Thus, no serious search burden is imposed on the Examiner.

Furthermore, the different Groups of inventions must be independent and distinct. Indeed, the MPEP §802.01 defines

the terms "independent" and "distinct" as:

> **INDEPENDENT**
> The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process.
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> **DISTINCT**
> The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term related is used as an alternative for dependent in referring to subjects other than independent subjects.

Clearly, Groups I and II cannot be considered independent of one another as the Examiner has identified several linking claims generic to each group. Applicants maintain that there is a defined relationship between the Groups I, II and IV inventions, i.e., the use of the nucleic acid molecules to induce PTGS in a target organism. In view of all the foregoing, Applicants request a withdrawal of, or at the very least a modification of the present restriction requirement.

In order to be fully responsive to the above-mentioned requirements, Applicants hereby elect the subject matter of Group I, i.e., claims 33-39, 60-65, 69-83, 100, 101, and linking claims 93-98, 102, 104-110 for examination. Applicants further elect the species of plants for examination. However, this election is traversed as PTGS has been observed in species as diverse as humans, plants,

nematodes and fungi and is always correlated with the presence of the SRMs disclosed herein. It is Applicant's position that the instantly claimed methods function successfully to silence target genes in many different species so that the requirement for election is unwarranted in this application.

Applicants' elections in response to the present restriction and election of species requirements are without prejudice to their right to file one or more continuing applications, as provided in 35 U.S.C. §121, on the subject matter of any claims finally held withdrawn from consideration in this application.

Early and favorable action on the merits of this application is respectfully solicited.

Respectfully submitted,
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